

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHERIFF, CLARK COUNTY,  
Appellant,  
vs.  
ANIBAL DEJESUS SIGARAN A/K/A  
JOSE MAURICIO IRAHETA,  
Respondent.

No. 40417

FILED

DEC 18 2002

JANETTE M. BLOOM,  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from an order of the district court granting in part respondent Anibal DeJesus Sigaran's pretrial petition for a writ of habeas corpus.

On April 17, 2002, Sigaran was charged by way of a criminal indictment with one count each of conspiracy to commit robbery, coercion, attempted coercion, attempted robbery, and burglary. On June 5, 2002, Sigaran filed a pretrial petition for a writ of habeas corpus in the district court. The State opposed the petition. After conducting a hearing on July 11, 2002, the district court granted in part Sigaran's petition for a writ of habeas corpus. The district court concluded that the State failed to present sufficient evidence to sustain the counts of attempted coercion and burglary. The State now appeals from the portion of the district court's order granting Sigaran's petition. We conclude that the district court erred in dismissing the two counts.

On appeal from an order granting a pretrial petition for a writ of habeas corpus based on lack of probable cause, "[t]he sole function of the supreme court is to determine whether all of the evidence received at the preliminary hearing establishes probable cause to believe that an offense

has been committed and that defendant committed it.”<sup>1</sup> As a general rule, this court will not overturn an order granting a pretrial petition for a writ of habeas corpus for lack of probable cause absent a showing of substantial error by the district court.<sup>2</sup>

The probable cause determination has two components: (1) that an offense has been committed; and (2) that the accused committed the offense.<sup>3</sup> Probable cause to support a criminal charge “may be based on slight, even ‘marginal’ evidence, because it does not involve a determination of the guilt or innocence of an accused.”<sup>4</sup> “To commit an accused for trial, the State is not required to negate all inferences which might explain his conduct, but only to present enough evidence to support a reasonable inference that the accused committed the offense.”<sup>5</sup> “Although the [S]tate’s burden at the preliminary examination is slight, it remains incumbent upon the [S]tate to produce some evidence that the offense charged was committed by the accused.”<sup>6</sup> The issue on appeal in this case is whether the State presented sufficient evidence to establish probable cause to believe that Sigaran committed the crimes of attempted coercion and burglary.

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<sup>1</sup>Lamb v. Holsten, 85 Nev. 566, 568, 459 P.2d 771, 772 (1969). In this case, however, the State sought an indictment from a grand jury.

<sup>2</sup>Sheriff v. Provenza, 97 Nev. 346, 347, 630 P.2d 265, 265 (1981).

<sup>3</sup>NRS 171.206.

<sup>4</sup>Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980) (citations omitted).

<sup>5</sup>Kinsey v. Sheriff, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971).

<sup>6</sup>Woodall v. Sheriff, 95 Nev. 218, 220, 591 P.2d 1144, 1144-45 (1979).

Based on our review of the record, we conclude that the State presented enough evidence to support a reasonable inference that Sigaran committed the offenses charged. The victim testified at the grand jury proceedings as follows:

I stepped out of my car to get my mail, and at that time a car pulled up behind me. . . . [A] man got out of the car. . . . I believe he said hi, how are you doing? I looked at him. I said fine.

I started to get back in my car, and I believe he said at that time I followed you in. And at that point I knew something was wrong. I said get away from me. I sat back down in my car. My car was off, and I started to close the door.

At that point he grabbed the door, and he stuck his head into where I was sitting, and I grabbed my phone. I said get away from me or I will call the police. He stuck his hand in his pocket and he said if you call the police I will fuck you up.

The victim testified that when Sigaran placed his hand in his pocket, she assumed he was holding a gun. The above grand jury testimony supports the State's allegations of attempted coercion<sup>7</sup> and burglary.<sup>8</sup> Sigaran

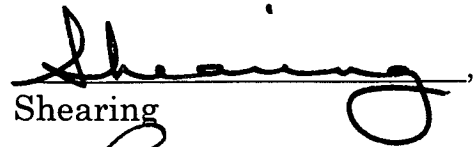
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<sup>7</sup>Count III (attempted coercion) of the indictment alleged that Sigaran "attempt[ed] to use physical force, or the immediate threat of such force, against [victim], with intent to compel [victim] to do, or abstain from doing, an act which she had a right to do, or abstain from doing, by defendant attempting to prevent [victim] from calling the police." See NRS 207.190(1); NRS 193.330.


<sup>8</sup>Count V (burglary) of the indictment alleged that Sigaran "enter[ed], with intent to commit larceny and/or robbery and/or some other felony, that certain 2000 BMW . . . owned by [victim]." See NRS 205.060(1); see also NRS 193.0145 ("Enter,' when constituting an element or part of a crime, includes the entrance of the offender, or the insertion of any part of his body." (Emphasis added.)).

attempted to prevent the victim from calling the police by threatening her with violence. Also, with the victim's driver-side door open, Sigaran inserted his head inside the car between the steering wheel and the victim when he approached her. Therefore, we conclude that the State made a sufficient showing of probable cause, and the district court erred in granting Sigaran's petition in part by dismissing the counts of attempted coercion and burglary. Accordingly, we

ORDER the judgment of the district court REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

 J.  
Shearing

 J.  
Leavitt

 J.  
Becker

cc: Hon. Michael A. Cherry, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Clark County Public Defender  
Clark County Clerk